

Supreme Court, U. S.
FILED

APPENDIX

JUL 30 1973

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1973

No. 72-1297

DONALD E. JOHNSON, Administrator of Veterans' Affairs,
et al.,

Appellants,

—v.—

WILLIAM ROBERT ROBISON, ETC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

JURISDICTIONAL STATEMENT FILED MARCH 22, 1973
FURTHER CONSIDERATION OF THE QUESTION OF
JURISDICTION POSTPONED TO THE HEARING ON
THE MERITS MAY 14, 1973

IN THE
Supreme Court of the United States
OCTOBER TERM, 1973

No. 72-1297

DONALD E. JOHNSON, Administrator of Veterans' Affairs,
et al.,

Appellants,

—v.—

WILLIAM ROBERT ROBISON, ETC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

INDEX TO APPENDIX

	Page
Docket Entries	1
In the United States District Court for the District of Massachusetts:	
Complaint	5
Motion for Summary Judgment	10
Affidavit of William Robert Robison	11
Motion to Dismiss	13
The opinion and judgment of the district court are printed at J.S. App. A and B	14
The government's notice of appeal is printed at J.S. App. C	14
Motion For Stay Pending Appeal To The Supreme Court of the United States And Order Granting the Stay	15
In the Supreme Court of the United States:	
Order Postponing further consideration of the question of jurisdiction to the hearing on the merits	16

DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 72-434-G

#44 Civil Rights—Seeking to be declared eligible
for Vet. Educational Benefits.

DATE	PROCEEDINGS
1972	
Feb. 3	Complaint filed.
Feb. 4	Summons issued.
March 30	Marshal's return of service by certified mail dated 2/10/72 filed.
May 5	Plaintiff's Motion for Summary Judgment filed with affidavit of William Robert Robison.
May 5	Memorandum in Support of Plaintiff's Motion for Summary Judgment FILED.
May 18	<i>GARRITY, J.</i> Re P's Motion for Summary Judgment—"Procedural order: Hearing will be on 6/5/72 at 11:00 a.m. Counter affidavits and defendant's brief must be filed on or before 5/31/72; reply brief if any, may be filed on or before 6/5/72 at 10:00 am." cc/cl.
June 1	P's Motion for a continuance of hearing scheduled for June 5, 1972 FILED (assented to) with affidavit of David Rosenberg.
June 1	Govt.'s Motion for Leave to File Reply Late, FILED.
June 1	Govt.'s Motion to Dismiss FILED.
June 1	Govt.'s Memorandum FILED.

DATE	PROCEEDINGS
1972	
June 1	GARRITY, J. Re Motion for continuance—"Allowed—postponed one week to 6/12/72 at 11:00 a.m." cc/cl.
June 6	GARRITY, J. Re motion filed June 1, 1972 (motion for leave to file reply late) allowed c/c.
June 12	GARRITY, J. Govt's ORAL MOTION for admission of David Rosenberg as counsel for pltf. in this case only, ALLOWED; oral arguments; P's mo. for summary judgment and D's Mo. to dismiss, TUA.
June 23	Deft's Memorandum in Support of Denying Plaintiff's Motion for Summary judgment, FILED with c/a.
July 11	Reply Memorandum to defendants' memorandum opposing summary judgment for plaintiff.
July 31	Memorandum on Hackney V. Tarr FILED by (Deft.) with c/a.
July 31	Plaintiff's Reply on Hackney V. Tarr, FILED.
1973	
Jan. 4	GARRITY, J. OPINION ENTERED . . . that plaintiff and the members of his class, who have satisfactorily completed two years of alternate service or who, after completing 180 days of such service, have been released therefrom upon a determination of a hardship, medical, or other bona fide basis for such early release are to be considered "eligible" within the meaning of 38 U.S.C. 1652(a) (1) to receive benefits under Chapter 34 of Title 38, U.S.C. to the same degree and extent as veterans of "active duty" within the meaning of 38 U.S.C. 101(21) as applied only to chapter 34 of Title 38. cc/cl., West Publishing and Law Week.

DATE	PROCEEDINGS
1973	
Jan. 4	GARRITY, J. DECLARATORY JUDGMENT ENTERED cc/cl., West Publishing and Law Week.
Jan. 12	Notice of appeal FILED (Defendant's).
Jan. 12	Defendant's motion for stay pending appeal, FILED.
Jan. 12	Certificate of service as to above filings.
Jan. 18	GARRITY, J. Re D's motion for stay pending appeal—"Motion denied without prejudice to renewal if accompanied by a supporting memorandum, for the reasons (1) that the Court's judgment is declaratory only and (2) that 28 U.S.C. 1291 and 2201 indicate that an appeal herein does not lie to the Court of Appeals." cc/cl.
Jan. 22	Affidavit in response to defendants' motion for a stay pending appeal FILED.
Jan. 22	Notice of Appeal to the Supreme Court of the United States filed.
Jan. 22	Motion for stay pending Appeal to the Supreme Court of the United States filed.
Jan. 22	Affidavit of Service filed.
Jan. 26	GARRITY, J. Re D's motion for stay pending appeal to Supreme Court—"Upon consideration of motion and Rosenberg affidavit in response filed 1/22/73, motion allowed and so ordered." cc/cl.
Jan. 29	Affidavit of David Rosenberg in opposition to Ds' motion for stay pending appeal.
Jan. 29	GARRITY, J. —Re: motion to stay pending appeal to Supreme Court—"Allowance of motion on 1/26/73 is reaffirmed after consideration of Rosenberg affidavit filed 1/29/73." (cc/cl).

DATE	PROCEEDINGS
1973	
Feb. 13	Certified copy of docket entries and original pleadings forwarded to the Supreme Court, Washington, D.C.
No. 72-1297	In the Supreme Court of the United States.
March 22	Jurisdictional Statement filed.
April 24	Motion to Affirm filed.
May 14	Order postponing further consideration of the question of jurisdiction to the hearing on the merits and setting the case for argument with No. 72-700, <i>Hernandez, et al. v. Veterans Administration, et al.</i>

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 72-484-G

[Filed February 3, 1972]

WILLIAM ROBERT ROBISON, on behalf of himself and
all others similarly situated, PLAINTIFFS

v.

DONALD E. JOHNSON, Administrator of Veterans' Affairs;
and VETERAN'S ADMINISTRATION OF THE UNITED STATES,
DEFENDANTS

COMPLAINT

Plaintiff, through counsel, respectfully shows the following:

1. This action arises under the First and Fifth Amendments to the Constitution and certain federal laws and regulations, including but not limited to 28 U.S.C. §§ 1331, 1337, 1343, 1361; 38 U.S.C. §§ 101 et seq.; 42 U.S.C. § 1981; 50 U.S.C. App. §§ 451, et seq.; and 32 C.F.R. § 1601. Jurisdiction over the subject matter of this action is conferred by said provisions of the Constitution and laws and regulations of the United States.
2. The amount in controversy, exclusive of interest and costs, exceeds \$10,000.
3. Plaintiff and members of the class he represents seek a judgment pursuant to 28 U.S.C. §§ 2201 et seq., declaring 38 U.S.C. §§ 101(21), 1652 and 1661 invalid under the First and Fifth Amendments to the extent that said statutory provisions operate to deny educational assistance from the Veterans' Administration to citizens who have fulfilled their Selective Service obligations by performing compulsory service, but who, because of their religious beliefs, were prevented from serving in the Armed Forces.

4. Plaintiff, WILLIAM ROBERT ROBISON, is 24 years of age, a citizen of the United States and a resi-

dent of Brighton, Massachusetts. Mr. Robison has satisfactorily completed two years of compulsory service as a conscientious objector pursuant to the provisions of the Military Selective Service Act of 1967, 50 U.S.C. App. §§ 451 et seq. (hereinafter the "Selective Service Act").

5. Plaintiff brings this action on his own behalf and on behalf of a class of citizens similarly situated:

a. The class is defined as all those who have served two years of compulsory national service as conscientious objectors pursuant to the requirements of the Selective Service Act.

b. The class defined above is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; and the claims of the representative party are typical of the claims of the class. The representative party will fairly and adequately protect the interests of the class.

c. In addition, a class action is necessary and proper in this case because each of the criteria enumerated in Rule 23(b) (1)-(3) of the Federal Rules of Civil Procedure are satisfied.

6. Defendant, Veteran's Administration, is an independent federal agency charged with the duty, under 38 U.S.C. § 201 of administering the laws relating to the relief and other benefits provided by law for veterans, their dependents, and their beneficiaries.

7. Defendant, DONALD E. JOHNSON, Administrator of Veterans' Affairs, is the designated head of the Veteran's Administration and is made responsible by 38 U.S.C. § 210 for the proper execution and administration of all laws administered by the Veterans' Administration and for the control, direction, and management of the Veterans' Administration. He is further authorized by 38 U.S.C. § 210 to make all rules and regulations which are necessary or appropriate to carry out the laws administered by the Veterans' Administration. Defendant JOHNSON is sued for actions, he has taken and threatens to take in his official capacity and under color of federal law, which violate the First and Fifth Amendments to the Constitution.

8. On January 23, 1968 plaintiff was classified as a conscientious objector (I-O) by his local Selective Service Board pursuant to § 456(j) of the Selective Service Act and 32 C.F.R. § 1622.14.

9. 32 C.F.R. § 1622.14 provides:

"In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed services."

10. Pursuant to § 456(j) of the Selective Service Act, a registrant classified I-O "Shall . . . , in lieu of such induction, be ordered by this local board . . . to perform for a period equal to the period prescribed in . . . [Section 454(b)] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board pursuant to Presidential regulations may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be ". . . [subject to imprisonment for up to 5 years and a fine of not more than \$10,000]."

11. On August 28, 1968 plaintiff's local board ordered him to report for such civilian work.

12. Plaintiff was duly assigned by his local board to Peter Brent Brigham Hospital, Boston, Massachusetts, and did report for such service.

13. On May 12, 1970, after having satisfactorily completed two years of service, he was ordered released from duty under his assignment.

14. Plaintiff terminated his employment at Peter Brent Brigham Hospital the same day.

15. In September, 1971, Plaintiff enrolled as a first year law student at Northwestern [sic] Law School.

16. On September 29, 1971 plaintiff applied for educational assistance from the Veterans' Administration.

17. On December 8, 1971 plaintiff's application was denied by defendants on the grounds that under 38 U.S.C.

§§ 101(21), 1652, and 1661 those who fulfill their Selective Service obligation through compulsory service, but because of their religious beliefs cannot serve in the military, are barred from receiving educational assistance from the Veterans' Administration.

18. Plaintiff's financial situation is such that without educational assistance from the Veterans' Administration, he will be unable to afford his law school tuition, which is \$2400 per year, and may be forced to leave school next year to obtain sufficient funds to complete his education.

19. Under 38 U.S.C. §§ 101(21), 1652 and 1661, the educational assistance denied to plaintiff is made available not only to servicemen in the Armed Forces, but also to those who have volunteered or have been compelled to fulfill their Selective Service obligation through civilian work in the national interest, including employment with the Public Health Service, or the National Oceanic and Atmospheric Administration or as cadets and midshipmen at a service academy.

20. 38 U.S.C. §§ 101(21), 1652 and 1661, as applied by defendants to deny plaintiff and members of the class he represents educational assistance available to all other citizens, who have fulfilled their Selective Service obligations, violates the Fifth Amendment guarantee of equal protection of the law.

21. Said statutory provisions in denying educational assistance vital to plaintiff's ability to complete his education impose a penalty for plaintiff's religious beliefs in violation of the First Amendment right to free exercise of religion.

22. Unless this Court grants the relief requested below plaintiff and the members of the class he represents will suffer grave and irreparable injury, in that they will be denied an equal opportunity to obtain an education and they will be penalized for exercising their religious liberties.

23. All available and adequate administrative remedies have been exhausted.

24. No prior application for the relief requested below has been made.

WHEREFORE, plaintiff respectfully requests that the Court enter a judgment:

1. Declaring that plaintiff and his class are eligible for educational benefits from the Veterans' Administration;
2. Declaring that 38 U.S.C. §§ 101(21), 1652, and 1661, as applied, violate the First Amendment's guarantee of religious freedom and the Fifth Amendment's guarantee of equal protection of the laws; and
3. Granting such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

CHARLES R. NESSON
Langdell Hall
Cambridge, Mass. 02138
(495-4609)

DAVID ROSENBERG
Langdell Hall
Cambridge, Mass. 02138
(495-3755)

/s/ Matthew Feinberg
MATTHEW FEINBERG
% Civil Liberties Union of
Mass.
3 Joy St.
Boston, Mass. (227-9459)
Attorneys for Plaintiff

Dated: February 3, 1972
Cambridge, Mass.

[Title Omitted in Printing]

MOTION [FOR SUMMARY JUDGMENT]
[Filed May 5, 1972]

Plaintiff upon the annexed affidavit of William Robert Robison sworn to the 1st day of May, 1972 and upon all the pleadings filed herein, moves the court as follows:

That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in the plaintiff's favor for the relief demanded in the Complaint on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law.

/s/ Matthew Feinberg
MATTHEW FEINBERG
3 Joy Street
Boston, Massachusetts

/s/ David Rosenberg
Harvard Law School
Cambridge, Massachusetts

CHARLES R. NESSON
Harvard Law School
Cambridge, Massachusetts

Attorneys for Plaintiff

Dated: May 5, 1972
Cambridge, Massachusetts

[Title Omitted in Printing]

AFFIDAVIT

[Filed May 5, 1972]

WILLIAM ROBERT ROBISON, being duly sworn deposes and says:

I am 24 years of age and reside at 5 Breck Avenue, in Brighton, Massachusetts.

Shortly after my 18th birthday, I was registered with Selective Service Local Board No. 39 in my hometown of Fairfax, Virginia. In November, 1966 I applied to the Board for classification as a conscientious objector because my religious beliefs do not allow me to participate in war in any form. After a personal appearance and on January 23, 1968, I was classified as a conscientious objector (I-O) by the Board.

Following this classification and on May 13, 1968, I began work at Peter Brent Brigham Hospital. I took this job based on my understanding that my Board would approve it as a suitable assignment for my alternative service obligation. On August 28, 1968, the Board issued the order for me to report for alternate service and formally approved my assignment at Peter Brent Brigham Hospital. This order credited me with service from May 13, 1968. Also, by the order, the control and custody of the Board in Virginia was transferred to the Massachusetts State Director, who was instructed to supervise my service.

On May 13, 1970, after two years of satisfactory service, I received notification that as of that date I was discharged from any further Selective Service obligation. On the same day I terminated my hospital employment.

At the beginning of my service I earned \$80 per week. My wife and I had to live on the earnings; I received no benefits, allotments, medical or other services from the government during the term of my duty at the hospital under assignment from the Board. Nor have I received any such benefits, allotments or medical or other services since my discharge. As I understand it, conscientious objectors assigned to alternative civilian service are not eligible for any government assistance.

In September, 1971 I enrolled at Northeastern Law School. The tuition for this year is \$2400 and will in all likelihood be increased next year.

On September 29, 1971 I applied to the Veterans' Administration for educational assistance to enable me to finance my law school education. In December, 1971 I received a letter from the Regional Office of the Veterans' Administration notifying me that I am not eligible for such assistance because compulsory national service as a conscientious objector does not qualify as "active duty" within the law. Essentially, while I fulfilled my Selective Service obligation by satisfactorily performing assigned duties for two years, I am ineligible for educational benefits available to all other men who have fulfilled that obligation, whether in the military or in civilian government programs. The sole basis for this ineligibility is that I am a conscientious objector opposed to participating in war in any form.

If I do not receive assistance from the Veterans' Administration, it will be a severe financial hardship to continue my law school education. Because of my low salary during the two years I served at Peter Brent Brigham Hospital, and the absence of any government assistance, I was unable to save any money toward my education. I could not find employment for 8 months after my service. My only sources of income at present are from 20 hr./week after-school employment with GAC Tax Return Co. in Allston, and a \$1500 loan from the Massachusetts Higher Education Loan Program. I have received no money from my family since 1967. I have applied for other loans, but have been rejected by all except one as to which I am still awaiting a reply.

I am presently serving on the Board of Directors of two community development programs sponsored by the Office for Economic Opportunity. For purposes of those organizations, I am certified under OEO standards as a "low income person," meaning an income of \$2000 or less during the preceeding year.

WILLIAM ROBERT ROBISON

/s/ William Robert Robison

Sworn to on 1st day of May, 1972.

/s/ George V. Guida

[Title Omitted in Printing]

[Filed June 1, 1972]

MOTION TO DISMISS

Now come the defendants, by their attorney Joseph L. Tauro, United States Attorney for the District of Massachusetts, and move to dismiss the above-entitled action, asserting as grounds therefor that:

- (1) the complaint fails to state a claim upon which relief can be granted;
- (2) the court lacks jurisdiction over the subject matter of the suit; and
- (3) plaintiff has failed to exhaust available administrative remedies.

Respectfully submitted,

JOSEPH L. TAURO
United States Attorney

By: /s/ **William A. Brown**
WILLIAM A. BROWN
Assistant U. S. Attorney

The opinion and judgment of the district court are printed at J.S. App. A and B.

The government's notice of appeal is printed at J.S. App. C.

[Title Omitted in Printing]

**MOTION FOR STAY PENDING APPEAL TO
THE SUPREME COURT OF THE UNITED STATES
[AND ORDER—GRANTING THE STAY]**

Now come defendants, Donald E. Johnson, Administrator of Veterans' Affairs, and Veterans Administration of the United States, by their attorney, James N. Gabriel, United States Attorney for the District of Massachusetts and move for stay of the Order of the District Court for the District of Massachusetts entered January 4, 1973 in the above-entitled action pending appeal to the Supreme Court of the United States, pursuant to Rule 62(e), Fed. R. Civ. P., asserting as grounds therefor:

- (1) a Notice of Appeal to the Supreme Court of the United States has been filed herewith;
- (2) the status quo can be preserved by staying the above-mentioned decision;
- (3) there is a substantial possibility of success by defendants in the prosecution of their appeal; and
- (4) the public interest would best be served by staying the judgment in this case which declares an Act of Congress unconstitutional.

Respectfully submitted,

JAMES N. GABRIEL
United States Attorney

By: /s/ William A. Brown
WILLIAM A. BROWN
Assistant U. S. Attorney

DOCKETED

1/26/73

Upon consideration of motion and Rosenberg affidavit in response filed 1/22/73, motion allowed and so ordered.*

/s/ Garrity
J.

* 1/29/73

Reaffirmed after consideration of Rosenberg affidavit filed 1/29/73
/s/ Garrity, J.

SUPREME COURT OF THE UNITED STATES

No. 72-1297

DONALD E. JOHNSON, Administrator of Veterans'
Affairs, ET AL., APPELLANTS

v.

WILLIAM ROBERT ROBISON, ETC.

APPEAL FROM the United States District Court for
the District of Massachusetts.

The statement of jurisdiction in this case having been
submitted and considered by the Court, further consider-
ation of the question of jurisdiction is postponed to the
hearing of the case on the merits. The case is set for
oral argument with No. 72-700.

May 14, 1973

